

Filed for intro on 01/31/2002
HOUSE BILL 3135 By
Whitson

SENATE BILL 3071
By Elsea

AN ACT to amend Tennessee Code
Annotated, Titles 57 and 67,
relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 57-3-302(a), is amended by deleting the words, punctuation, numbers and symbols “one dollar and ten cents (\$1.10)” and substituting instead the words, punctuation, numbers and symbols “one dollar and fifteen cents (\$1.15)”.

SECTION 2. Tennessee Code Annotated, Section 57-3-302(b), is amended by deleting the words, punctuation, numbers and symbols “four dollars (\$4.00)” and substituting instead the words, punctuation, numbers and symbols “four dollars and twenty cents (\$4.20)”.

SECTION 3. Tennessee Code Annotated, Section 57-5-201(a)(1), is amended by deleting the words, punctuation, numbers and symbols “three dollars and ninety cents

(\$3.90)” and substituting instead the words, punctuation, numbers and symbols “four dollars and ten cents (\$4.10)”.

SECTION 4. Tennessee Code Annotated, Section 67-4-2003, is amended by adding the following language as a new subsection (d):

(d) An affiliated group subject to the tax levied by this part shall register with the department of revenue as an affiliated group, providing such information as reasonably required by the department. The registration information form shall be filed with the department by October 15, 2002 or within fifteen (15) days after the date the affiliated group becomes subject to the tax, whichever date occurs last. An affiliated group shall be required to so register even though some or all of the corporations included in its filing group may have registered or filed an excise tax return under prior law. In the event that corporate members of an affiliated group cease to be a part of the filing group or in the event that new corporate members join the filing group, the affiliated group shall so advise the department of revenue within thirty (30) days of the event by filing an amended registration form providing such information as reasonably required by the department.

SECTION 5. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following language as a new subsection:

“Person” or “taxpayer” means every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state-chartered or national bank, or state-chartered or federally chartered savings and loan

association. In the case of persons or taxpayers required to file franchise, excise tax returns on a combined or consolidated basis, the combined or consolidated group shall be considered a single person or taxpayer;

SECTION 6. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new subsection:

() "Affiliated group" means any group of corporations that have elected to file a consolidated federal income tax return under the provisions of Sections 1501 through 1505 of the Internal Revenue Code; provided, however, that, for purposes of Parts 20 and 21 of this chapter, neither a financial institution nor a hospital or hospital company shall be considered an affiliated group. For tax years beginning on or after January 1, 2003, affiliated groups shall file consolidated franchise, excise tax returns to the extent of their United States operations. Such consolidated franchise, excise tax returns shall include all corporations that are filing on a consolidated basis for federal income tax purposes if one or more such corporations would be subject to Tennessee franchise, excise taxes if it were filing on a separate entity basis.

SECTION 7. Tennessee Code Annotated, Section 67-4-2006(a) is amended by adding the following new subdivision (4) immediately after subdivision (3) and renumbering the remaining subdivisions accordingly:

(4) For an affiliated group of corporations, "net earnings" for Tennessee excise tax purposes is defined as the federal consolidated taxable income or loss of the affiliated group before the net operating loss deduction and special deductions provided for in Sections 241 through 247 and 249 in the Internal Revenue Code, and as adjusted by subsections (b) and (c) of this section on a consolidated basis.

SECTION 8. Tennessee Code Annotated, Section 67-4-2006(c) is amended by deleting the first sentence of subdivision (2) and substituting instead the following two sentences:

Except for business entities required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and single business entity; therefore, in the case of mergers, consolidations, and like transactions, no loss carryovers incurred by the predecessor taxpayer shall be allowed as a deduction from net earnings on the excise tax return filed by the successor taxpayer. In no case shall any taxpayer, whether filing its excise tax return on a combined, consolidated, or single entity basis, be permitted to take a loss carryover that it, or a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 9. Tennessee Code Annotated, Section 67-4-2006(c) is amended by deleting the language in subdivision (4) in its entirety and substituting instead the following language:

Business entities required to file excise tax returns on a combined or consolidated basis may take any qualified Tennessee loss carryover that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such loss carryover has not previously been taken by the member itself before it joined the group or by another group at the time the group member generating the loss was a member of that group; and provided, that the loss carryover shall be subject to the limitations set forth in this subsection. In no case shall any taxpayer filing its excise tax return on a combined or consolidated basis, be permitted to take a loss carryover that a business entity included in its filing group, generated during

a tax year in which such entity was not subject to Tennessee excise tax and did not file an excise tax return.

SECTION 10. Tennessee Code Annotated, Section 67-4-2007 is amended by deleting the language in subsection (e) in its entirety and substituting instead the following new language:

Except for business entities required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and single business entity for Tennessee excise tax purposes and shall file its excise tax return on a separate entity basis reflecting only its own business activities.

SECTION 11. Tennessee Code Annotated, Section 67-4-2009(7) is amended by deleting the first sentence of subdivision (A) in its entirety and substituting instead the following sentence:

Except for unitary groups of financial institutions and business entities that have been required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. In no case shall any taxpayer, whether filing its excise tax return on a combined, consolidated, or single entity basis, be permitted to take a credit carryover that it, or a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 12. Tennessee Code Annotated, Section 67-4-2009(7) is amended by deleting the language in subdivision (C) in its entirety and substituting instead the following language:

Business entities that have been required or permitted to file excise tax returns on a combined or consolidated basis may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such credit has not previously been taken by the member itself before it joined the group or by another group at the time the group member generating the credit was a member of that group; and provided that, the credit carryover shall be subject to the limitations set forth in this subsection. In no case shall any taxpayer filing its excise tax return on a combined or consolidated basis, be permitted to take a credit carryover that a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 13. Tennessee Code Annotated, Section 67-4-2012, is amended by adding the following sentence at the end of subsection (a):

Persons required or permitted to file excise tax returns on a consolidated basis shall compute their excise tax apportionment formula on a consolidated basis.

SECTION 14. Tennessee Code Annotated, Section 67-4-2014, is amended by adding the following new subsection:

() Any law to the contrary notwithstanding, for tax years beginning after December 31, 2006, a hospital company shall file consolidated excise tax returns in the same manner as an affiliated group files consolidated excise tax returns under the provisions of this Part even though it may be filing on a separate entity basis for federal income tax purposes.

SECTION 15. Tennessee Code Annotated, Section 67-4-2015 is amended by adding the following sentence immediately after the first sentence of subsection (b):

Persons required or permitted to file franchise, excise tax returns on a combined or consolidated basis shall compute their quarterly estimated franchise and excise tax payments on a combined or consolidated basis, as the case may be, the combined or consolidated group being the taxpayer.

SECTION 16. Tennessee Code Annotated, Section 67-4-2015 is amended by adding the following new subsection immediately after subsection (f) and reentering the remaining subsections accordingly:

() Notwithstanding any other law to the contrary, an affiliated group that files a consolidated franchise, excise tax return for a tax period beginning on or after January 1, 2003 but before December 31, 2003 shall not be penalized if each of its quarterly estimated payments equal twenty five percent (25%) of seventy percent (70%) of their final tax liability for the tax year.

SECTION 17. Tennessee Code Annotated, Section 67-4-2015 is amended by adding the following sentence immediately after the first sentence and immediately prior to the second sentence of subsection (g):

Persons required or permitted to file franchise, excise tax returns on a combined or consolidated basis shall make their franchise, excise tax extension requests and compute the payments thereon on a combined or consolidated basis, as the case may be, the combined or consolidated group being the taxpayer. An extension request for a combined or consolidated group must show the names of each business entity that will be included in the filing group.

SECTION 18. Tennessee Code Annotated, Section 67-4-2015 is amended by adding the following language as a new subsection (l):

Notwithstanding any other law to the contrary, for tax years beginning between January 1, 2002 and December 31, 2002, the commissioner of revenue is authorized to waive, in whole or in part, any statutory penalty assessed for the

delinquent filing or deficient payment of any quarterly estimated franchise, excise tax declaration payment due for such tax year if, in the judgment of the commissioner or the commissioner's delegate, the taxpayer has acted reasonably and has made a good faith effort to comply with the statutory provisions of this section.

SECTION 19. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following as a new Section:

(a) Notwithstanding any other provision of law to the contrary, except this section,

(1) any subchapter S corporation,

(2) any limited liability company, professional limited liability company, limited partnership, registered limited liability partnership, professional registered limited liability partnership, or other entity that is treated as a partnership for federal income tax purposes, or

(3) any limited liability business entity (except for qualified subchapter S subsidiaries with an election in effect under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code and qualified real estate investment trust subsidiaries described in Section 856(l) of such Code) which is disregarded as an entity separate from its owner for federal income tax purposes and which has as its single owner a person subject to the tax under this part or a not-for-profit entity,

that pays excise tax to this state and, for federal income tax purposes, passes its net income, or a portion thereof, through to a Tennessee member, partner or shareholder subject to the Tennessee income tax shall complete a Tax Credit Certificate form for each Tennessee member, partner or shareholder as prescribed by the department. The form shall show the amount of excise tax

paid that is attributable to the net income passed-through to the Tennessee member, partner or shareholder and such other information as the commissioner may require.

(b) A business entity completing the Tax Credit Certificate form required by subsection (a) above shall, at the same time it files provides the Internal Revenue Service with information concerning the amount of net income passed-through to such member, partner or shareholder for federal income tax purposes, retain a copy of the form, mail two (2) copies to the Tennessee member, partner or shareholder to which it applies and mail one (1) copy of the form to the department.

(c) Commission of fraud, as determined by the commissioner, in complying, or failing to comply, with this section shall result in a penalty assessment of one hundred percent (100%) of any taxes evaded by the business entity or a member, partner or shareholder of the business entity.

SECTION 20. Tennessee Code Annotated, Section 67-4-2103, is amended by adding the following language as a new subsection (d):

(d) An affiliated group subject to the tax levied by this part shall register with the department of revenue as an affiliated group, providing such information as reasonably required by the department. The registration information form shall be filed with the department by October 15, 2002 or within fifteen (15) days after the date the affiliated group becomes subject to the tax, whichever date occurs last. An affiliated group shall be required to so register even though some or all of the corporations included in its filing group have may have registered or filed a franchise tax return under prior law. In the event that corporate members of an affiliated group cease to be a part of the filing group or in the event that new corporate members join the filing group, the affiliated group shall so advise the

department of revenue within thirty (30) days of the event by filing an amended registration form providing such information as reasonably required by the department.

SECTION 21. Tennessee Code Annotated, Section 67-4-2106 is amended by adding the following sentence at the end of subsection (b):

For persons required to file franchise tax returns on a consolidated basis, net worth is defined as the difference between the total assets less total liabilities of the entire filing group as shown on the books and records of the group kept in accordance with generally accepted accounting principles.

SECTION 22. Tennessee Code Annotated, Section 67-4-2106, is amended by deleting the language in the last sentence of subsection (c) in its entirety and substituting instead the following new language:

Except for business entities required or permitted to file franchise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and single business entity for Tennessee franchise tax purposes and shall file its franchise tax return on a separate entity basis reflecting only its own business activities.

SECTION 23. Tennessee Code Annotated, Section 67-4-2108(a), is amended by adding the following immediately after the first sentence of subdivision (3):

For persons required to file franchise tax returns on a consolidated basis, “property” for purposes of this section shall be the property owned or used by the entire filing group valued at cost less accumulated depreciation computed in accordance with generally accepted accounting principles.

SECTION 24. Tennessee Code Annotated, Section 67-4-2109(e) is amended by deleting the first sentence of subdivision (1) in its entirety and substituting instead the following sentence:

Except for unitary groups of financial institutions and business entities required to file franchise tax returns on a combined or consolidated basis, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. In no case shall any taxpayer, whether filing its franchise tax return on a combined, consolidated, or single entity basis, be permitted to take a credit carryover that it, or a business entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 25. Tennessee Code Annotated, Section 67-4-2109(e), is amended by deleting the language in subdivision (3) in its entirety and substituting instead the following language:

Business entities required to file franchise tax returns on a combined or consolidated basis may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such credit has not previously been taken by the member itself before it joined the group or by another group at the time the group member generating the credit was a member of that group; and provided, that the credit carryover shall be subject to the limitations set forth in this subsection. In no case shall any taxpayer filing its franchise tax return on a combined or consolidated basis, be permitted to take a credit carryover that a business entity included in its filing group generated during a tax year in which such entity was not subject to Tennessee franchise, excise taxes and did not file a franchise, excise tax return.

SECTION 26. Tennessee Code Annotated, Section 67-4-2111 is amended by

adding the following sentence at the end of subsection (a);

Persons required to file franchise tax returns on a consolidated basis shall compute their franchise tax apportionment formula on a consolidated basis.

SECTION 27. Tennessee Code Annotated, Section 67-4-2112, is amended by adding the following new subsection:

() Any law to the contrary notwithstanding, for tax years beginning after December 31, 2006, a hospital company shall file consolidated franchise, excise tax returns in the same manner as an affiliated group files consolidated franchise, excise tax returns under the provisions of this Part even though it may be filing on a separate entity basis for federal income tax purposes.

SECTION 28. (a) Sections 1 through 3 of this Act shall take effect January 1, 2003, the public welfare requiring it.

(b) Sections 4 through 27 of this Act shall take effect January 1, 2003 and shall apply to all tax years beginning on or after that date, the public welfare requiring it.